Reserved.

COURT NO.3

Criminal Misc. Application No. 240 of 2002.

Sri Kishore Kharola …Applicant

Vs.

State of Uttaranchal & others …Respondents.

Hon'ble Irshad Hussain, J.

The present petition under section 482 of the Code of Criminal Procedure (hereinafter for short 'Code') has been filed for quashing of the proceedings in criminal case no.99 of 2000, under sections 406/409 of I.P.C. pending in the Court of Judicial Magistrate, Purola, Uttarkashi.

Above mentioned case was registered on filing of charge-sheet no.31 of 1999, arising out of first information report no.27 of 1999 lodged by complainant Rupendra Nath Misra, Project Director, District Rural Development Agency, Uttarkashi. It was alleged that under the D.R.D.A. scheme a non-government organization in the name and style "Himalaya Industrial Training Institute", Joshiyara, police station, Uttarkashi was sanctioned sum of Rs.2.05 lacs to undertake various works under Jawahar Rojgar Yojana in the year 1998. Verification of the work was carried out in the month of February 1999 and meanwhile it was found that the organization neither paid the wages to the labourers employed in the work undertaken nor submitted required muster rolls and vouchers to show disbursement of the wages and to justify that the work had been completed, despite repeated reminders on 31.08.1998, 16.01.1999,

04.03.1999 and 12.05.1999. It was thus found that the office bearers looking after the affairs of the organization have in fact dishonestly misappropriated the funds released in favour of the organization. Consequently F.I.R. dated 06.06.1999 was filed and on completion of the investigation police submitted charge-sheet under sections 406/409 of I.P.C. against the petitioner who was the Secretary-Treasurer of the organization as well as against other office bearers, viz., the President and the Vice President of the organization.

Heard Sri Vinod Sharma, learned counsel for the petitioner and learned A.G.A. for the respondent-State.

Learned counsel for the petitioner submitted that the F.I.R. was lodged without taking into account that the organization had completed the work worth Rs.2, 36, 746.00 as against sum of Rs.2.05 lacs released in favour of the organization under the Jawahar Rojgar Yojana and further that the work undertaken was inspected and verified by Assistant Engineer, Construction Division, U.P. Jal Nigam, Purola and countersigned by Executive Engineer in the month of October, 1999 and the same was also submitted for verification to the District Rural Development Agency in the month of November, 1999 and in view of the above there was no material to prima facie make out a case of criminal breach of trust against the petitioner and others. Attention was also drawn to the supplementary affidavit which was filed to show that the required measurement book, muster rolls and vouchers were submitted before the Project Director which belie the allegations as made in the F.I.R. Letter dated 12.06.2002, Annexure-I sent by the Project Director to the President of the organization was also filed in support of the contention.

On the other hand learned A.G.A. argued that the averments of the affidavit of the petitioner fail to rebut the allegations of the F.I.R. that the verification of the work was undertaken in the month of February 1999, that the petitioner failed to furnished the required vouchers etc. despite repeated reminders and that in the totality of circumstances of the case there was sufficient material and evidence to prima facie make out a case of criminal breach of trust. In view

thereof learned A.G.A. submitted that the petition has no merit and deserve to be dismissed.

It is now well settled that power of quashing of criminal proceedings under section 482 of the Code or Article 226 of the Constitution is to be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. The principle was laid down by the apex court in **Bhajan Lal's case (1992, Criminal Law Journal, 527)**. Keeping in view the settled principle, the facts and circumstances of the instant case do not warrant invoking of the power under section 482 of the Code and at the out set it may be mentioned that the present petition being devoid of merit deserve to be dismissed.

There is no dispute that the N.G.O. was sanctioned and released sum of Rs.2.05 lacs to undertake the required work under the Jawahar Rojgar Yojana supervised by the District Rural Development Agency. The money was released in the year 1998. As per the allegations of the F.I.R., Annexure-1 to the affidavit of the petitioner, the work undertaken by the N.G.O. was inspected for purposes of verification in the month of February 1999 and the same was not found to be complete. Moreover there were complaints that the wages to the labourers were not paid and muster rolls and vouchers were not furnished despite four reminders sent by the Project Director. The state of affair thus made it clear that the money released under the scheme was not till then utilized in the works which were undertaken by the N.G.O. and considering this it was prima facie established that the breach of trust has been committed in regard to the money released in favour of the N.G.O. through the petitioner and other office bearers. The F.I.R. was thus lodged on 06.06.1999. The investigation was taken up and the allegations were prima facie substantiated on the basis of the evidence collected thereon by the investigating officer who filed the charge-sheet against the petitioner and others.

On behalf of the petitioner it was argued that in the month of October, 1999 the work was completed and was duly verified by the

Engineers and the report was submitted to the District rural Development Agency in the month of November 1999. The so-called verification report has been annexed as Annexure-2 to the affidavit. It has not been shown that the work was completed per schedule and therefore, the so-called verification report of October 1999 cannot be taken to assail the allegations as spelt out in the F.I.R. and found supported by evidence collected during the investigation, prima facie make out the case of criminal breach of trust.

It is also of significance that the petitioner with his supplementary affidavit brought on record copy of the letter of Project Director, D.R.D.A., Uttarkashi dated 12.06.2002 in regard to the submission of the measurement book, muster roll and vouchers of the payment relating to the work undertaken by the N.G.O. Nothing has been shown as to why the required documents could not be submitted earlier when as may as four reminders were sent by the Project Director before lodging of the F.I.R. Since the charge-sheet has been submitted after investigation of the case on the basis of the material available in support of the allegations of the F.I.R., the documents now filed by petitioner cannot be taken to assail the propriety of submission of charge-sheet in the case and initiation of the proceedings against the petitioner.

For the above reasons, the petition being devoid of merit deserve to be dismissed. Petition is dismissed accordingly.

(Irshad Hussain, J.)

07.04.2003./B.